

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LAWRENCE MARTIN,

Plaintiff,

v.

HSBC BANK USA NATIONAL
ASSOCIATION,

Defendant.

No. 12-15181

District Judge David M. Lawson

Magistrate Judge R. Steven Whalen

REPORT AND RECOMMENDATION

On November 26, 2012, Plaintiff Lawrence Martin filed a *pro se* civil complaint. Pursuant to 28 U.S.C. §636(b)(1)(B), I recommend that the Complaint be dismissed without prejudice, based on Plaintiff's failure to timely serve the Defendants.

I. FACTS

Plaintiff filed his complaint on November 26, 2012, naming HSBC Bank USA National Association ("HSBC") as the Defendant. Seeing that more than 120 days had elapsed since the filing of the complaint, and that no summons return had been filed, this Court on April 1, 2013 entered an Order for Plaintiff to Show Cause why the Complaint should not be dismissed for failure to prosecute. The Court ordered Plaintiff to respond in writing by April 15, 2013, and warned that failure to do so "will result in a report recommending the dismissal of this action as to the above-named defendant." [Doc. #3]. To date, Plaintiff has not responded to the show cause order, nor has HSBC been served.

II. DISCUSSION

Fed.R.Civ.P. 4(l) requires that "[i]f service is not waived, the person effecting

service shall make proof thereof to the court.” Under Fed.R.Civ.P. 4(m), service must be made upon a defendant within 120 days after filing the complaint, otherwise,

“...the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.”

In its April 1, 2013 Order to Show Cause, this Court gave notice to the Plaintiff that the time for service had expired, and that a recommendation for dismissal was in the cards. Yet, Plaintiff has not seen fit to respond to the Court’s show cause order.

Under these circumstances, the complaint should be dismissed without prejudice pursuant to Rule 4(m).

III. CONCLUSION

Accordingly, I recommend that the complaint be dismissed without prejudice for failure to timely serve the Defendant, pursuant to Fed.R.Civ.P. 4(m).

Any objections to this Report and Recommendation must be filed within fourteen (14) days of service of a copy hereof as provided for in 28 U.S.C. §636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985); *Howard v. Secretary of HHS*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Filing of objections which raise some issues but fail to raise others with specificity will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Secretary of HHS*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed’n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

Within fourteen (14) days of service of any objecting party's timely filed objections, the opposing party may file a response. The response shall be not more than twenty (20) pages in length unless by motion and order such page limit is extended by the court. The response shall address specifically, and in the same order raised, each issue contained within the objections.

Date: May 28, 2013

s/ R. Steven Whalen
R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

I hereby certify that a copy of the foregoing document was sent to parties of record on May 28, 2013, electronically and/or by U.S. mail.

s/ Michael Williams
Relief Case Manager for the Honorable
R. Steven Whalen